

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventor: Kelly J. Reasoner Examiner: Michael E. Butler  
Serial No.: 10/665,132 Group Art Unit: 3653  
Filed: September 16, 2003 Docket No.: 100201882-1  
Title: Inventory Control Device

## **Response to Notice of Non-Compliance**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This letter is being filed in response to the Notice of Non-Compliance mailed December 10, 2008.

## **AUTHORIZATION TO DEBIT ACCOUNT**

It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's deposit account no. 08-2025.

## Remarks

In the response to the Notice of Non-Compliance mailed 12/10/2008, Appellants' attorney (Philip S. Lyren) telephoned the Supervisory Patent Examiner (Patrick H. Mackey) on January 9, 2009 and January 12, 2009. Examiner Mackey and attorney Lyren discussed whether Appellants' legal argument under 35 U.S.C. 103(c) in the appeal brief constitutes "new evidence" which is barred per 37 CFR 41.37(c)(2) {this section of CFR prohibits an appeal brief from entering new evidence after a final office action}. Examiner Mackey stated that he had not yet heard a definitive answer from the appeal division of the US PTO and instructed attorney Lyren to re-file the appeal brief. This appeal brief is being re-filed on January 12, 2009 in accordance with those instructions.

Appellants take the position that making a legal argument under 35 U.S.C. 103(c) is not "new evidence" per 37 CFR 41.37(c)(2) since no evidence is being presented. Instead, Appellants are making a legal argument stating the combination under 35 U.S.C. 103(a) of two references is legally improper under 35 U.S.C. 103(c). Specifically, US publication number 2004/0118215A1 (Reasoner) cannot legally be combined under 35 U.S.C. 103(a) since this reference only qualifies as prior art under 35 U.S.C. 102(e). **No evidence is being submitted by Appellants in this appeal brief.**

Appellants respectfully ask the Examiner to withdraw the corresponding rejections per 35 U.S.C. 103(c).

Respectfully submitted,

/Philip S. Lyren #40,709/

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